

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA PROVIDING FOR REGULATION OF CONTRACTORS ; REPEALING ORDINANCE 86-8, AS AMENDED; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITIONS; PROVIDING FOR CRIMINAL VIOLATIONS; PROVIDING FOR ISSUANCE OF NOTICES TO APPEAR; PROVIDING FOR REPEAL AND SAVINGS CLAUSE; PROVIDING FOR APPLICABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE OF LAWS AND ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the business of construction and building improvements is a matter substantially affecting the public interest; and

WHEREAS, in order to protect the health, safety and welfare of the public, it is necessary to ensure that individuals engaged in the construction industry are duly qualified and that construction is done according to code; and

WHEREAS, pursuant to Fla. Stat. § 489.127, a county may enforce the provisions of Fla. Stat. § 489.127(1) and § 489.132 (1) against persons who engage in activity for which a county license or state certification or registration is required; and

WHEREAS, pursuant to Fla. Stat. § 489.531(3), a county may enforce the provisions of Fla. Stat. § 489.531(1) against persons who engage in activity for which a county certification is required; and

WHEREAS, pursuant to Fla. Stat. § 489.127(5) and § 489.531(3), a county is authorized to enforce codes and ordinances against unlicensed contractors and may enact an ordinance establishing procedures for implementing same; and

WHEREAS, Laws of Florida, Chapter 67-1876, as amended, authorizes the Construction Industry Licensing Board of Palm Beach County ("CILB") to oversee local licensure of contractors and discipline of same; and

WHEREAS, Laws of Florida, Chapter 67-1876, as amended, declares it unlawful for any person to engage in the business of contracting without the required local certificate of competency; and

WHEREAS, Palm Beach County desires to protect the public by restricting and penalizing construction activities performed by unlicensed contractors and to enforce the provisions of Fla. Stat.

Chapter 489 and Laws of Florida, Chapter 67-1876, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

SECTION 1. DEFINITIONS.

As used herein, the following terms shall have the meaning described. Any term not defined herein shall have the meaning found in Fla. Stat. Chapter 489 and/or Laws of Florida, Chapter 67-1876, as amended.

- A. "Certificate" or "License" shall mean a current valid Certificate of Competency issued by the CILB pursuant to Laws of Florida, Chapter 67-1876, as amended, or a certificate issued by the state of Florida pursuant to Fla. Stat. Chapter 489.
- B. "Certificate holder" or "Licensee" shall mean that contractor who holds a current, valid certificate issued by the CILB or the state of Florida.
- C. "CILB" shall mean the Construction Industry Licensing Board of Palm Beach County, as established by Laws of Florida, Chapter 67-1876, as amended.
- D. "Contractor" shall mean the person who is qualified for and responsible for an entire project contracted for and means (except as exempted by Laws of Florida, Chapter 67-1876, as amended) the person who, for compensation, undertakes to, submits a bid to, or does him/herself or by others construct, repair, alter, remodel, add to, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others. A contractor shall hold a license or certificate as provided by law before bidding or performing work requiring such license or certificate.
- E. "Code Enforcement officer" or "investigator" shall mean those persons designated by Palm Beach County Contractors Certification Division for enforcement of the regulations contained in Laws of Florida, Chapter 67-1876, Fla. Stat. Chapter 489, and this ordinance.
- F. "Registrant" shall mean that contractor who holds a license issued by the CILB and who has registered with the state of Florida pursuant to Fla. Stat. Chapter 489.
- G. "Special Act" shall mean Laws of Florida, Chapter 67-1876, as may be amended

1 from time to time.

2 **SECTION 2. PROHIBITIONS.**

3 A. No person shall:

- 4 (1) falsely hold himself/herself or a business organization out as a licensee,
5 certificate holder, or registrant;
- 6 (2) falsely impersonate a certificate holder, or registrant;
- 7 (3) present as his/her own the certificate or registration of another;
- 8 (4) knowingly give false or forged evidence to the CILB or member thereof;
- 9 (5) use or attempt to use a certificate or registration which has been suspended
10 or revoked;
- 11 (6) engage in the business or act in the capacity of a contractor or advertise
12 himself/herself or a business organization as available to engage in the
13 business or act in the capacity of a contractor without being duly registered
14 or certified.
- 15 (7) operate a business organization engaged in contracting after 60 days
16 following the termination of its only qualifying agent without designating
17 another primary qualifying agent, except as provided in Fla. Stat. §489.119
18 and §489.1195;
- 19 (8) commence or perform work for which a building permit is required pursuant
20 to the adopted state minimum building code without such building permit
21 being in effect;
- 22 (9) willfully or deliberately disregard any county ordinance related to uncertified
23 or unregistered contractors.

24 B. No person shall:

- 25 (1) engage in the business or act in the capacity of a contractor without having
26 met the provisions of the Special Act.
- 27 (2) It is unlawful for a person who is required to possess a certificate of
28 competency, but who does not possess a current certificate of competency:
- 29 (a) to advertise to the public in a newspaper ad, airwave

1 transmission, or a telephone directory, or by issuance of a
2 card, or otherwise, that he/she is a contractor, or is qualified
3 to engage in business as a contractor;

4 (b) to hold himself/herself out as a contractor, whether as a
5 plaintiff, defendant or witness in any court in this County;

6 (3) It is unlawful for a contractor or a qualified business organization to fail to
7 identify any of his/her vehicles used to transport materials and equipment to
8 a job site. Identification shall be effectuated by placing upon said vehicles
9 the contractor's name or symbol and certificate of competency number, in
10 two locations;

11 (4) It is unlawful for a contractor to fail to include his/her certificate of
12 competency number in any advertising to the public in a newspaper,
13 magazine or other periodical, telephone directory display ad, airwave
14 transmission, business card, pamphlet, or other advertising medium
15 announcing, advertising, or promoting services regulated pursuant to the
16 Special Act, excluding a single-line listing in a telephone directory

17 C. The following acts are prohibited:

18 (1) willful or deliberate disregard and violation of the applicable building codes
19 or laws of the County or the State of Florida;

20 (2) aiding or abetting an uncertified person or business organization to evade any
21 provision of the Special Act;

22 (3) knowingly combining or conspiring with an uncertified person with intent to
23 evade the provisions of the Special Act;

24 (4) acting in the capacity of a contractor in any name other than that on the
25 certificate and/or different from the scope of work for which he/she is
26 certified to perform;

27 (5) diversion of funds or property received for prosecution or completion of a
28 specified construction project or operating where, as a result of the diversion
29 the contractor is or will be unable to fulfill the terms of his/her obligations or

1 contract;

2 (6) failure in any material respect to comply with the provisions of the Special
3 Act;

4 (7) failure to maintain insurance coverage as set by the CILB or required by state
5 or federal regulations;

6 (8) falsification of application or testimony given before the CILB;

7 (9) abandonment of a construction project in which the contractor is engaged or
8 under contract as a contractor. A project shall be considered abandoned after
9 30 days if the contractor terminates the project without written notification
10 to the owner or the prospective owner without just cause, or fails to
11 substantially perform work under the contract;

12 (10) signing a statement with respect to a project or contract falsely indicating that
13 the work is bonded, falsely indicating that payment has been made for all
14 subcontracted work, labor and material which results in a financial loss to the
15 owner, purchaser or another contract, or falsely indicating that workers'
16 compensation and public liability insurance are provided;

17 (11) a finding of proof and continued evidence that the certificate holder is guilty
18 of fraud or deceit, gross negligence, incompetency and misconduct in the
19 practice of contracting;

20 (12) subcontracting any work to any person, firm or business organization not
21 holding a certificate of competency for work involved in the subcontract;

22 (13) obtaining a permit for any work in which the certificate holder does not
23 actually supervise, direct and control the construction or installation covered
24 by such permit;

25 (14) being convicted or found guilty, regardless of adjudication, of a crime in any
26 jurisdiction which directly relates to the practice of contracting or the ability
27 to practice contracting;

28 (15) failure to satisfy, within a reasonable time, the terms of a civil judgment
29 obtained against the licensee relating to the practice of the licensee's

profession.

(16) committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job, the contractor has received funds from the customer to pay for the supplies or services, and the contractor has not had the liens removed from the property (by payment or by bond) within 75 days after the date of such liens;
2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or
3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the consumer.

SECTION 3. CRIMINAL VIOLATIONS.

Any person who commits an act prohibited by Section 2 of this Ordinance may be charged with a first degree misdemeanor and may be punished accordingly. In accordance with the Florida Statutes § 489.127, any unlicensed person who commits a violation of section 2(A) of this Ordinance, after having been found previously guilty of such violation, commits a felony of the third degree.

1 **SECTION 4. ISSUANCE OF NOTICE TO APPEAR**

2 The investigators with the Contractor Certification Division are designated as code
3 enforcement officers pursuant to Fla. Stat. Chapter 162. Pursuant to the authority set forth in Fla.
4 Stat. Chapter 162, an investigator may issue a Notice to Appear at any hearing conducted by county
5 court if the investigator, based upon personal investigation, has reasonable cause to believe that a
6 locally licensed contractor or unlicensed contractor has committed a prohibited act set forth in
7 Section 2 of this Ordinance. A Notice to Appear means a written order by an investigator in lieu
8 of arrest requiring a person accused of violating the law to appear in a designated court at a specified
9 date and time. Prior to issuing the Notice to Appear, the investigator shall provide written notice of
10 the violation of this ordinance and shall establish a reasonable time period within which the person
11 must correct the violation. Such time period shall be not less than 5 days and no more than 30 days.
12 If upon personal investigation, the investigator finds that the person has not corrected the violation
13 within the prescribed time period, a Notice to Appear may be issued to the person who committed
14 the violation. The investigator is not required to provide a reasonable time period to correct if there
15 is reason to believe that the violation presents a serious threat to the public health safety and welfare,
16 or if the violation is irreparable or irreversible.

17 **SECTION 5. APPLICABILITY**

18 This ordinance shall apply to the unincorporated and incorporated areas of Palm Beach
19 County pursuant to the Special Act, Article VIII and Fla. Stat. Chapter 489.

20 **SECTION 6. ENFORCEMENT.**

- 21 A. Nothing herein contained shall prohibit the County from enforcing its codes
22 and ordinances by any other means. Nothing herein contained shall prohibit
23 the CILB from exercising its full authority pursuant to the Special Act and
24 Fla Stat Chapter 489.
- 25 B. The Director of the Contractor Certification Division and the CILB are
26 authorized to inspect and audit the records of construction firms to determine
27 compliance with this ordinance, the Special Act, and Fla. Stat. Chapter 489,
28 based upon a reasonable suspicion that a violation of any law or ordinance
29 has occurred.

1 C. The Director of the Contractor Certification Division and the CILB shall have
2 the power to subpoena records, surveys, drawings, contracts or other
3 materials regarding activities regulated by this Ordinance, the Special Act
4 and Fla. Stat. Chapter 489, based upon a reasonable suspicion that a violation
5 of any law or ordinance has occurred.

6 D. The Director of the Contractor Certification Division and the CILB shall
7 have the power to subpoena telephone company records regarding
8 telephone numbers used in advertisements or listings regarding regulated
9 activity pursuant to this ordinance, the Special Act and Fla. Stat. Chapter
10 489, where address of the telephone number and/or name and address of
11 the subscriber is unavailable to the investigator. The information obtained
12 by subpoena shall be limited to the name of the person or entity who
13 obtained phone service, the mailing address of the person or entity who
14 obtained phone service, and the address where the phone line in question
15 is located.

16 **SECTION 7. REPEAL AND SAVINGS CLAUSE**

17 Ordinance 86-8, as amended by Ordinance 86-25 and Ordinance 90-23 and Ordinance 94-5,
18 is hereby repealed in its entirety. All other Ordinances in conflict with this Ordinance are hereby
19 repealed to the extent of said conflict. However, all provisions of Ordinance 86-8, as amended, are
20 preserved for the limited purpose of prosecuting violations of Ordinance 86-8, as amended, which
21 violations were committed prior to the effective date of this Ordinance.

22 **SECTION 8. SEVERABILITY.**

23 If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason
24 held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the
25 remainder of this ordinance.

26 **SECTION 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

27 The provisions of this ordinance shall become and be made a part of the Code of Laws and
28 Ordinances of Palm Beach County, Florida. The sections of the ordinance may be renumbered or
29 relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or

1 any other appropriate word.

2 **SECTION 10. EFFECTIVE DATE**

3 The provisions of this ordinance shall become effective upon filing with the Secretary of
4 State.

5 **APPROVED AND ADOPTED** by the Board of County Commissioners of Palm Beach
6 County, on the 18th day of November, 1997.

7
8 PALM BEACH COUNTY, FLORIDA,
9 BY ITS BOARD OF COUNTY COMMISSIONERS

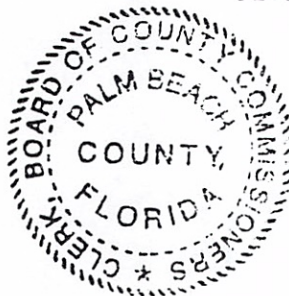
10 By [Signature]
11 Chairman

12 APPROVED AS TO FORM AND
13 LEGAL SUFFICIENCY

14 [Signature]
15 COUNTY ATTORNEY

DOROTHY H. WILKEN, CLERK
Board of County Commissioners

By [Signature]
DEPUTY CLERK



Filed with the Department of the State on the 21 day
of November, 1997.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on 11/18/97
DATED at West Palm Beach, FL on 12/4/97.
DOROTHY H. WILKEN, Clerk
By: [Signature] D.C.